

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
:
- against - : 17-CR-61 (LAP)
:
ANDREW DAVENPORT, :
:
Defendant. :
-----x

LORETTA A. PRESKA, SENIOR UNITED STATES DISTRICT JUDGE:

Before the Court is Mr. Davenport's motion to modify his sentence pursuant to 18 USC section 3582 (c) (1) (A) (dkt. no. 251) because of the COVID-19 pandemic. The Government has opposed (dkt. no. 253), and Mr. Davenport has replied (dkt. no. 254). For the reasons set out below, the motion is denied.

The Court assumes without deciding that it has the power to waive the administrative exhaustion requirement.

As set out in the papers, Mr. Davenport is a 52-year-old man who is a non-insulin dependent diabetic with a history of Hypertension and Myocardial Infarction. According to his most recent medical review, he is currently stable with a good prognosis. Mr. Davenport is compliant with his medication, walks 3-4 miles a day, and has lost approximately 16 pounds since his surrender on January 21 (to serve a sentence of a year and a day). From the Court's lay perspective and observations of Mr. Davenport, the weight loss is a good development for Mr. Davenport's health, not a result of any disease or illness.

The Government has described the measures in place in the BOP in general and at FCI Schuylkill in particular to avoid the spread of COVID-19 within BOP facilities. The Warden reports that there are no current cases of COVID-19 at Schuylkill but that Haverford, the town in which Mr. Davenport proposes to be released, has one of the highest rates of COVID-19 infection in the Commonwealth of Pennsylvania.

There is no suggestion that Mr. Davenport poses a danger to the community or a risk of flight.

Based on Mr. Davenport's relative youth and the facts that his medical conditions are well-controlled, that there are no COVID-19 cases at Schuylkill, and that Haverford has a high infection rate for COVID-19, the Court finds that Mr. Davenport has not demonstrated extraordinary and compelling reasons for release pursuant to 18 USC section 3582(c) (1) (A). Accordingly, the motion (dkt. no. 251) is denied.

SO ORDERED.

Dated: New York, NY
 April 9, 2020



Loretta A. Preska
Senior United States District Judge